

**BEFORE THE
VIRGINIA STATE CORPORATION COMMISSION**

Petition of Cavalier Telephone, LLC

**For Arbitration with Verizon Virginia Inc. pursuant
to 47 U.S.C. § 252(b) of the Communications Act
of 1934, as amended by the Telecommunications
Act of 1996.**

Case No. PUC2002 00171

RESPONSE OF VERIZON VIRGINIA INC.

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I. INTRODUCTION

Pursuant to 47 U.S.C. § 252(b)(3) of the Telecommunications Act of 1996 (the "Act"), Verizon Virginia Inc. ("Verizon") submits this Response to the Petition for Arbitration of Cavalier Telephone, LLC ("Cavalier") filed with the Virginia State Corporation Commission ("Commission") on August 14, 2002.

As detailed below, Cavalier's Petition sets forth broad and unsubstantiated complaints about the negotiations process. Cavalier, however, has no one but itself to blame for the fact that the parties made little progress in their attempts to negotiate a new interconnection agreement for Virginia. In sum, months of negotiations were mooted or wasted because Cavalier repeatedly shifted its position regarding which contract template to use. For these reasons, Cavalier's Petition is not ripe for adjudication and should be dismissed. Nonetheless, Verizon responds below to each issue Cavalier identifies, without waiving this standing objection.

II. SUPPORTING EXHIBITS

Verizon's Proposed agreement is attached as Exhibit A. Unless otherwise noted, references herein to Verizon's proposed contract language are references to that language as it appears in Exhibit A ("Verizon's Proposed Agreement" or the "Agreement"). Additional documents related to the Parties' negotiations are attached as Exhibit B.

III. NEGOTIATIONS

As Verizon set forth via e-mail dated August 13, 2002¹ to Cavalier, Verizon disputes Cavalier's characterization of the negotiations. Verizon made significant efforts to negotiate the terms of new interconnection agreements with Cavalier for the states of New Jersey, Pennsylvania, Delaware, Maryland, Virginia and the District of Columbia. However, because of Cavalier's repeated attempts to shift the starting point of such negotiations, the parties have not made any real progress in negotiating new interconnection agreements. Cavalier's tactics did not reflect good faith negotiations and forestalled resolution of any issues prior to arbitration.

Cavalier first requested to negotiate a new interconnection agreement for New Jersey. In response to that request, Verizon provided Cavalier a copy of Verizon's current nationwide model interconnection agreement as it does with all CLECs that request negotiations. Verizon was required to prepare and make available such a model agreement under the terms of the Federal Communications Commission's ("FCC") GTE Merger Order. Verizon's model interconnection agreement reflects Verizon's uniform service offerings and business practices and provides for unique state provisions that were developed through individual state proceedings.

On December 11, 2001, Cavalier did not agree to Verizon's proposal to start negotiations from Verizon's current model agreement and instead proposed that the parties' existing agreement in New Jersey serve as the basis for negotiations. Cavalier indicated that it "does not believe that the current agreement needs a wholesale revision and that Cavalier would amend only those sections that are not satisfactory."²

¹ Exhibit B-4.

² See August 13, 2002 email from Mr. Londono, Exhibit B-4.

In response to Cavalier's proposal, Verizon explained why negotiations should proceed from Verizon's current model interconnection agreement, rather than from an interconnection agreement that had been negotiated more than three years previously.³

Cavalier again refused to accept Verizon's proposal to negotiate from Verizon's current model interconnection agreement and reiterated its position that negotiations should proceed from the parties' existing New Jersey agreement.⁴

By letter dated March 6, 2002, Cavalier changed its position. Instead of negotiating solely in New Jersey, Cavalier requested negotiation of new interconnection agreements for Delaware, the District of Columbia, Maryland, Pennsylvania, and Virginia. In that letter, Cavalier requested "one common agreement for all of [Cavalier's] operating areas" and that the negotiations for these five additional states fall under the "umbrella" of the negotiations already underway for New Jersey.

In an effort to make progress in these negotiations, Verizon devoted substantial resources to review the parties' New Jersey agreement and to identify those provisions that Verizon could insert into its model interconnection agreement template for negotiation with Cavalier. Verizon then redlined those modified provisions into Verizon's current model agreement. Verizon provided this redlined model agreement to Cavalier on May 17, 2002 for its review. Contrary to Cavalier's feigned ignorance in ¶ 9 of its Petition as to why Verizon sent another redline on May 17, Verizon explained in detail at that time why the parties should begin negotiations from this modified model agreement.⁵

³ See August 13, 2002 email from Mr. Londono, Exhibit B-4.

⁴ *Id.*

⁵ See May 17, 2002 email, Exhibit B-1.

Cavalier again refused to negotiate from this customized model agreement and demanded further justification from Verizon for negotiating from Verizon's model agreement. Verizon provided such justification on June 14, 2002.⁶ Cavalier never marked up this redlined agreement, and never identified those provisions that were acceptable to Cavalier.

On July 15, 2002, just one week before the opening of the arbitration window for these negotiations, Cavalier shifted position once more. Rather than starting negotiations from the parties' existing New Jersey agreement, and despite the fact that Verizon had already devoted substantial resources to reviewing that agreement, Cavalier proposed that the parties start negotiations, in all six jurisdictions in the former Bell Atlantic service territories, from the parties' existing Virginia arrangement, a § 252(i) adoption of an MCImetro agreement.⁷ Since the parties' existing Virginia agreement is substantially different from the parties' existing New Jersey agreement, Cavalier's shift of position nearly seven months after the beginning of negotiations put the parties at square one.

Two weeks later – and only 17 days before the close of the arbitration window – Cavalier again shifted position. Rather than starting negotiations from the parties' existing Virginia agreement, Cavalier proposed that the parties begin negotiations for all six jurisdictions from the agreement to be developed as a result of the arbitration between Verizon and WorldCom in Virginia.

Although Cavalier claims in footnote 14 of its Petition that Verizon never responded to this eleventh hour proposal, Verizon did in fact respond via e-mail dated August 13, 2002 before this Petition was filed. As Verizon then explained, Cavalier's eleventh hour proposal was

⁶ See June 14, 2002 email from Mr. Londono, Exhibit B-2.

⁷ See July 15, 2002 email from Mr. Clift, Exhibit B-3.

completely unacceptable, because it was simply impossible to begin negotiations from an agreement that did not then exist, and would not exist until after the close of the window for filing an arbitration window. Verizon and WorldCom were not scheduled to file their Virginia arbitration agreement until September 3, 2002 – nearly two weeks after the arbitration window closed for the negotiations between Cavalier and Verizon.

Moreover, the Virginia arbitration agreement between Verizon and WorldCom would not be available for adoption within the Commonwealth of Virginia until signed and approved – sometime after September 3, 2002. Therefore, Verizon would not agree to begin negotiations in any state from the non-existent Virginia arbitration agreement between Verizon and WorldCom.

Besides failing to negotiate in good faith, Cavalier has failed to comply with 47 U.S.C. § 252(b)(2)(A)(i) because it has not identified all unresolved issues in its Petition. Although Cavalier claims in ¶ 9 of its Petition that Verizon never provided a short list of issues to be addressed in a new agreement, Verizon did in fact provide such a list identifying “reciprocal compensation, intercarrier compensation, assurance of payment, performance measures and standards, collocation, insurance and indemnity.”⁸ Four days after receipt of this e-mail, Cavalier filed its Petition for arbitration in Virginia without identifying any of the issues flagged by Verizon

⁸ See, e.g. August 13, 2002 e-mail, Exhibit B-3.

IV. UNRESOLVED ISSUES AND THE POSITIONS OF THE PARTIES

ARBITRATION ISSUE 1: Interconnection Agreement - Which interconnection agreement shall form the template with which to work in changes and amendments particular to the network relationship between Cavalier and Verizon?

Cavalier's Position: Cavalier believes that there are very solid reasons for starting with the existing interconnection agreement that is operative in the state as the basic document from which to negotiate our next agreement. The existing agreement has been in force for several years; the parties are presently operating under it, and – while there are several areas that need to change, as noted below – it addresses many of the key issues of the ILEC-CLEC relationship; further, it was approved by the relevant state regulators, and therefore meets the basic requirements of the law. Given that this was legally acceptable when it was adopted, changes to it should be justified by changed circumstances, not by some general desire on the part of either party to simply generically “update” the terms. As an alternative, Cavalier has proposed using the soon-to-be-filed conforming agreement in the VA Consolidated Arbitration at the FCC as the template for use in all of the other states.

Verizon's Alleged Position: Verizon wishes to use the New Jersey/Connective agreement as a template as the starting point and believes the Virginia agreement Cavalier prefers is out-dated. Moreover, Verizon is evaluating what appeals it will take in the Consolidated Virginia Arbitration, and will not agree to use the conforming agreement in that proceeding for a template for all of Cavalier's operative states and jurisdictions going forward.

Verizon's Actual Position and Proposed Resolution:

As discussed in Section III with respect to the parties' negotiations history, Cavalier belatedly suggests that the parties' use their existing agreement as the starting point for negotiations. As explained to Cavalier in the course of negotiations, the existing agreement is dated and stale, and Verizon's preferred approach is to start with its model interconnection agreement. Notwithstanding Cavalier's ever changing position regarding which template to use to begin negotiations, and in order to accommodate Cavalier, Verizon has in fact agreed to use the parties' existing interconnection agreement in Virginia, with the updates discussed in connection with Issue 20, as a template — and Verizon so informed Cavalier prior to the filing of this Petition.

Cavalier, however, failed to attach a copy of the existing interconnection agreement, as amended, to its Petition, identify all unresolved issues, and provide Verizon's position as to all unresolved issues and disputed contract language. This fails the standard set forth in 47 U.S.C. § 252(b)(2)(A) for the petitioning party. Instead, it merely filed additional proposed amendments it hopes the Commission will order as a result of this arbitration. Although Cavalier is not in compliance with federal law and only recently proffered its existing agreement in Virginia as a starting point for negotiations, Verizon is willing to proceed with that template as a basis for negotiations. As explained in connection with supplemental issue 20, however, Cavalier's mercurial approach to the negotiations, repeated disregard for the positions and contract language Verizon communicated to Cavalier, and premature filing of an inadequate petition should not shift Cavalier's burden as the petitioning party to Verizon or otherwise prejudice Verizon's right to pursue both in negotiations and arbitration its preferred contract language.

Cavalier's proposed alternative of using one of the conforming agreements that will ultimately result from the *Virginia Arbitration Order*⁹ is an unacceptable alternative. None of the three agreements that will result from the *Virginia Arbitration Order* have been finalized and approved by the FCC. Moreover, the *Virginia Arbitration Order* is subject to review, reconsideration, and appeal and, consequently, the terms of the resulting agreements may be subject to revision. In addition, although the entire agreement may ultimately be subject to adoption in Virginia under Section 252(e), Verizon should not be compelled to *start negotiating*

⁹ *In the Matter of Petition of WorldCom, Inc., Cox Virginia Telcom, Inc., and AT&T Communications of Virginia Inc., Pursuant Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc.*, CC Docket Nos. 00-218, 00-249, 00-251, DA 02-1731, Memorandum Opinion and Order 2002 WL 1576912 (F.C.C.) ("*Virginia Arbitration Order*").

from an agreement that resulted from both give and take with another party or an order resolving disputed issues contrary to Verizon's preferred position.

ARBITRATION ISSUE 2: Term of Interconnection Agreement - How long should the term of the new agreement be?

Cavalier's Position: As with the initial agreement between the parties, the term of the amended agreement should be three years. Negotiating terms for agreements is time consuming and resource-intensive. Once completed, the provisions should be given a commercially reasonable period of time to be operative, and three years has been a workable term in Cavalier's agreements with Verizon.

Verizon's Alleged Position: Verizon wishes to adopt a two-year term.

Verizon's Actual Position and Proposed Resolution:

Contrary to Cavalier's assertions, Verizon's proposal gives Cavalier an opportunity for a three-year agreement. It simply requires Cavalier to negotiate a new agreement during the third year. Cavalier's proposal, by contrast, seems designed to give it the option to require Verizon to operate under the new agreement far longer than three years, simply by refusing to negotiate a new agreement until the end of three years, and then by refusing once again to negotiate in good faith. Given Cavalier's negotiating history, it should not be given this option.

The telecommunications marketplace is one of rapid legal and technological change. There is no better example of this reality than the recent decisions of the Supreme Court and D.C. Circuit Court of Appeals.¹⁰ In such an environment, it is essential that the parties reserve to themselves the ability to negotiate new agreements to accommodate and incorporate such changes. Verizon's two-year contract with a one year extension during negotiations is designed to balance the need for stability with the need for flexibility. To the extent that Cavalier seeks to ensure that the terms of this interconnection agreement are in place between the parties for three years, Verizon's language allows that to occur. Cavalier thus has no legitimate basis to object to Verizon's proposed language. Its continued objection can only mean that Cavalier wants terms

¹⁰ *Verizon Communications, Inc. v. FCC*, 535 U.S. ____ (2002), 122 S.Ct. 1646 (2002); *Worldcom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002).

that might force the agreement to be in effect longer than the three years. Because that s inconsistent with Cavalier's assertion that three years is a reasonable term, Cavalier's proposal should be rejected. Verizon's proposal will best ensure that a new agreement will be in place after the conclusion of the third year, and it should therefore be adopted.

ARBITRATION ISSUE 3: Directory Listings - Should there be a more efficient directory listings procedure put in place to handle the volume of customers generated by Cavalier service orders?

Cavalier's Position: There have been significant difficulties regarding the accuracy and timeliness of directory listings, particularly in Verizon-South jurisdictions. Putting aside the parties' particular interests, Cavalier believes that the public interest is ill-served by inaccuracies in directory listings, and believes that the parties need to establish procedures reasonably calculated to produce truly accurate directories. The current directory input process places responsibilities on Cavalier to test and correct Verizon inputs. Further there are no remedies afforded to Cavalier for publishing errors in the white and yellow pages.

Verizon's Alleged Position: The current metrics address accuracy concerns in the published directory. Further modification of the directory processes and metrics are under consideration in the Virginia Collaborative and should not [be] considered in these negotiations.

Verizon's Actual Position and Proposed Resolution:

In Issue 3, Cavalier alleges that the process through which Verizon includes directory listings in its published directories is deficient and that Verizon should pay exorbitant penalties to Cavalier for each and every mistake Cavalier identifies in Verizon's directories. Cavalier's position fails to take into account applicable law and if adopted would result in perverse economic incentives. On numerous occasions, the FCC and state commissions have already found that Verizon provides nondiscriminatory access to directory listing services. More fundamentally, Cavalier fails to note that it, not Verizon, has chosen Verizon as the directory publisher for Cavaliers' customers' basic directory listings, a service Verizon provides but for which it receives no compensation.¹¹ Cavalier remains free to publish its own directories or to

¹¹ Verizon receives compensation only when Cavalier's customers desire multiple listings, foreign listings, or other non-basic listing products.

contract with a third party to do the same if it is not satisfied with Verizon's directory listing service.¹²

To the extent applicable law obligates Verizon to provide access to a directory listing service, it requires such access only to be nondiscriminatory. It does not require Verizon to guarantee the accuracy of Cavaliers' customer listings or face penalties in the event errors are found. Nevertheless, Verizon takes very seriously all CLEC concerns regarding its directory listing process. As a result of those concerns, and as described further below, Verizon has tested and implemented many procedural improvements that have, and continue to ensure publication of extremely accurate directories. However, the participation and cooperation of each and every CLEC whose customers' listings appear in Verizon's directories is a necessary and fundamental component of the publication process. Cavalier's Petition indicates that it will only participate in that process upon receipt of compensation from Verizon. The Commission should reject Cavalier's positions and direct Cavalier to cooperate fully with Verizon in ensuring the accuracy of all listings in Verizon's directories.

A. Verizon's Directory Publication Process.

Verizon's directories are published by Verizon's directory publishing company, Verizon Information Services ("VIS"). VIS receives listing service orders from Verizon and processes all such orders in exactly the same manner and without regard to whether the order pertains to Verizon or Cavaliers' customers. Cavalier's customers' directory listings appear in the same format as those of Verizon's customers and VIS distributes directories to Verizon's and Cavalier's customers at exactly the same time, with the same frequency, and on exactly the same

¹² If Cavalier publishes its own directories, it may obtain Verizon's customer listings for inclusion in its directories pursuant to § 222(e) of the Act.

terms and conditions.¹³ Cavalier customer listings are identical in appearance, placement and font to those provided to Verizon's retail customers and are intermixed alphabetically with Verizon's listings.

Verizon's directory listing process is designed to ensure that 1) all CLEC customers are provided nondiscriminatory access to Verizon's directory listing services; and that 2) such listings are accurate and reliable. That process begins with the forwarding of service orders by either a CLEC, in this case Cavalier, or a Verizon customer service representative depending on the company providing service to the customer. Verizon then integrates both the Cavalier and Verizon orders into the same directory listing database.

The particular manner in which Cavalier customers' directory listing information becomes integrated into Verizon's database varies depending on the particular mode by which a Cavalier elects to provide service to its customers. For example, if a Cavalier migrates an existing Verizon customer to either resold service or a UNE platform, Cavalier may indicate to Verizon on the applicable Local Service Request ("LSR") to migrate Verizon's existing directory listing information "as is". If Cavalier places a "migrate as-is" service order, the customer's directory listing information remains in Verizon's directory listing database exactly as it was prior to the migration.

Alternatively, if Cavalier elects to provides service to its customer via a UNE loop or over its own facilities, Verizon does not assign the customer's telephone number or provide the dial tone. In this case, Verizon cannot identify the directory listing information applicable to the

¹³ To the extent Verizon provides directories to Verizon's customers at no charge, Verizon also does so for CLEC customers.

customer and Verizon is wholly dependant on Cavalier to provide that information and to do so accurately.

Regardless of how Cavalier provides service to its customer, however, Verizon proposes that Cavalier provide directory listing information to Verizon via the LSR process. This is the process Verizon has developed in cooperation with the CLEC industry and that Verizon has used with great success with many other CLECs. Pursuant to that process, for example, if Cavalier desires a migration "as is," it may either simply indicate as much on the "End User Form" portion of the LSR, or it may submit a Directory Listing Request form (a "DL" form) as part of the LSR. If Cavalier needs to add, delete, or modify a customer's listing, it may submit the change on the DL form. This procedure is the same for all CLECs, regardless of whether the CLEC is a reseller, uses Verizon's unbundled local switching, or has its own switch.

B. Verizon Has Designed its Directory Listing Process to Promote Accuracy and Efficiency In Publication of All Verizon and CLEC Customer Listings.

Verizon's directory publication process ensures that Verizon's directories are highly accurate regardless of whether a particular listing corresponds to a Verizon customer, a Cavalier customer, or any other CLEC's customer. The process includes many verification points at which errors are detected and corrected. These check points apply equally to all Verizon and CLEC listings. For example, Verizon's directory listing systems are programmed to automatically identify and "flag" individual listings if certain information is not correct. A common indicator that information may not be correct is that it does not match information already contained in the system for a particular customer. Verizon's systems can automatically detect such errors and flag them for correction. The systems do not, however, detect such errors on the basis of the carrier providing service to the particular customer. Verizon's systems can also automatically detect certain physical address errors. If the systems detect such an error, VIS

first attempts to correct the error on its own. If it cannot correct the error, VIS then contacts Verizon, Cavalier or the applicable other CLEC for assistance.

Verizon has also implemented several procedures that permit all CLECs, including Cavalier, to independently validate their customers' listings prior to publication. First, thirty business days prior to the "service order close" date for a particular directory, VIS provides each carrier a Listings Verification Report ("LVR") containing all listings that Verizon's database identifies as corresponding to the carrier's customers and that are scheduled for publication in the upcoming directory. The LVR includes name, address, listed telephone number, class of service, customer directory name, directory appearance, and type of listing.¹⁴

Second, Cavalier may verify the accuracy of their customers' listings by viewing any or all published listings in "real time" through the Electronic Data Interface (EDI) or through the Web GUI. This gives Cavalier access to an up-to-date display of the information in the directory listings database and an opportunity to correct any errors or provide updated information as necessary.

Third, Cavalier is now able to search and sort its customers' directory listings in an electronic format. Specifically, at Cavalier's request, Verizon will provide the LVR in an electronic text format (compatible with Excel spreadsheets), thereby allowing Cavalier to search and sort listings.

Fourth, Cavalier may also verify the accuracy of listing information by checking the electronic confirmation Verizon provides upon receipt and processing of every listing service

¹⁴ The Listing Verification Report is also provided upon CLEC request.

request. The confirmation includes the listing data Verizon generates from Cavalier's LSRs.¹⁵ By comparing its LSRs to the service order data, Cavalier can verify whether it provided the information it intended to provide thus verifying whether its own systems and processes are working correctly. Whenever either Verizon or Cavalier detects an error, or information that otherwise needs to be updated, Verizon performs the update regardless of which carrier is at fault.¹⁶ Verizon notes, however, that based on Verizon's experience, to the extent Cavalier customers' listing have been in need of updates or corrections, Cavalier's own input errors have been the cause in a significant number of cases.

Even though the legal standard the Commission must apply is one of nondiscriminatory access and not 100% accuracy, Verizon considers accuracy of all Verizon and CLEC directory listing information to be of paramount importance. As part of Verizon's efforts to achieve accuracy at or as near as possible to 100%, Verizon recently put in place a Directory Listing Quality Assurance Team ("QAT"). The QAT reviews daily every Verizon, Cavalier, and other CLEC directory listing service order prepared in the National Marketing Center to ensure that listings are appropriately placed in the Directory Assistance database and published directory. During that review process, the QAT follows a strict checklist that compares LSR listing information to the contents of the associated listing service order. Inaccurate service orders are returned for re-processing. Two days after order completion, the QAT places a directory assistance validation call to validate the presence of the particular listing under review. If the listing is not found, the QAT notifies Verizon's Data Base Administration Center to have the

¹⁵ For simple listings, the service order data is inserted directly into the confirmation order. For complex listings, which cannot easily be reproduced in the confirmation order, the CLEC is directed to an Internet-accessible copy of the service order itself. In either case, the CLEC is able to view the exact information entered by Verizon on the service order.

¹⁶ Where the error is the fault of the CLEC, the CLEC may submit a corrected LSR.

listing updated. Early indications are that the QAT has made significant contributions towards improving the overall accuracy of the Directory Assistance database. Verizon's performance metric OR-6-04 has a 98% accuracy standard and Verizon has exceed that standard every month.

Verizon has also taken steps specifically designed to improve the accuracy of its White Pages listings. First, Verizon has created the Listing Verification Report Correction Team (the "LVRC"). The LVRC resides in Verizon's National Marketing Center and serves as the single point of contact for receiving Listing Verification Report corrections from CLECs. Second, Verizon has and continues to participate in collaborative processes in several states to develop an appropriate measure of accuracy of CLEC directory listings information. Third, as part of Verizon's change management process, Verizon is modifying its Business Rules and Operational Support Systems to prevent listings from being dropped if a CLEC inadvertently fails to complete the directory listings portion of the LSR. Finally, Verizon is working to automate existing manual processes to further reduce opportunities for human error. For example, Verizon recently modified its OSS so that Verizon's National Marketing Center employees processing a loop/LNP or LNP LSR will be able to electronically populate appropriate directory listing fields in LSRs based on information already contained in customer service requests.

Directory listing information provided by Cavalier can only be as accurate as the data the Cavalier submits. Thus, as part of its effort to improve the accuracy of all directory listings, Verizon provides all CLECs, including Cavalier, with extensive documentation regarding the directory listing product and procedures applicable to listing their customers in Verizon's directories. Verizon has also conducted a series of workshops and training sessions designed to educate every CLEC as to how to improve their ability to provide accurate data and verification of that data as it is entered into Verizon's systems. Finally, Verizon also provides all CLECs

with multiple points of contact to assist with any question on concerns with respect to submitting directory listing information.

C. Verizon Provides Access To Directory Listing Service In Accordance With Applicable Law.

Verizon provides access to its directory listing service at or above the level required by applicable law.

1. Applicable Legal Standard - Nondiscriminatory Access

Contrary to Cavalier's assertions, the Act does not require Verizon to guarantee the accuracy of its customers' directory listings or face financial penalties. Applicable law also does not excuse Cavalier from cooperating with Verizon to ensure the accuracy of Cavalier's customers' listings. Rather, Sections 251(b) and 271(B) of the Act require Verizon to provide CLECs with *nondiscriminatory access* to directory listing services.¹⁷ Nondiscriminatory access in this context requires LECs "to implement procedures that are intended to minimize the potential for errors in the listings provisioned for the customers of competing LECs"¹⁸ A LEC provides nondiscriminatory access where it: (i) provides nondiscriminatory appearance and integration of listing to CLEC customers; and (ii) provides listings for competitors' customers

¹⁷ Section 251(b) of the Act provides that each local exchange carrier has a duty to provide "nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays." The FCC has interpreted "directory listing" as set forth in this section as "a verb that refers to the act of placing a customer's listing in a directory assistance database or in a directory compilation for external use (such as white pages). See *In the Matters of Implementation of the Telecommunications Act of 1996: Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 15550, 1999 FCC LEXIS 4384, at ¶ 160. However, the FCC has also noted that with respect to provision of directory listing service, "there is no retail analogue to measure commercial performance" and as such, the nondiscriminatory access test applies. *In the Matter of Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization to Provide In-Region, InterLATA Services in Pennsylvania*, 16 FCC Rcd 17419, n. 390 (2001) ("Pennsylvania 271 Approval Order"). Thus, under both § 251(b) and § 271(B), ILECs must provide nondiscriminatory access to directory listing.

¹⁸ *Pennsylvania 271 Approval Order* at ¶ 115.

with the same accuracy and reliability that it provides to its own customers.¹⁹ Where ILECs have implemented procedures to minimize errors, statistically significant errors do not require a finding of discriminatory access.²⁰ Thus, the touchstone of the Commission's inquiry should be whether Verizon has implemented procedures designed to minimize errors and whether Verizon affords Cavalier's listings treatment similar to that of its own customers, not whether Verizon is at all times able to achieve 100% accuracy of all listings – a nearly impossible standard.

2. Verizon Provides Nondiscriminatory Access To Directory Listing Services.

As described above, Verizon has gone to great lengths to implement processes and procedures to increase the accuracy and efficiency of its directory listing publication process as that process applies to all carriers' directory listing information. In no case do Verizon's systems and processes afford Verizon customers' directory listing information different or preferential treatment than that of Cavalier's or any other CLEC's customers. Verizon's directory listing procedures ensure that directory listings of all CLEC customers are included in Verizon's database on an accurate, reliable, and nondiscriminatory basis.

¹⁹ *Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana*, Memorandum Opinion and Order, 13 FCC Rcd 20599 at ¶ 255.

²⁰ See *Pennsylvania 271 Approval Order* at n. 400 (noting that “in some instances, we may find that statistically significant differences in measured performance may exist, but that such differences have little or no competitive significance in the marketplace. As such, we may deem such differences non-cognizable under the statutory standard.”); see also *In the Matter of Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) And Verizon Global Networks Inc., For Authorization to Provide In-Region, InterLATA Services in Massachusetts*, 16 FCC Rcd 3988, at ¶ 184 (2001) (“*Massachusetts 271 Approval Order*”); *In the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, 15 FCC Rcd 3955, at ¶ 3976 (1999) (“*New York 271 Approval Order*”). Manual processing methods are also not per se violations. Specifically, the FCC noted “As we have concluded in previous orders, the Commission does not require incumbent LECs to provide a certain level of automation in the provision of wholesale services, rather incumbent LECs must undertake additional automation as necessary to ensure that it can provide nondiscriminatory treatment to competitive LECs in light of existing and reasonably foreseeable commercial volume.” *Pennsylvania 271 Order* at ¶ 117

As discussed above, Verizon has made numerous adjustments to its directory listing procedures to reduce the frequency of errors in the first instance, and to make corrections when errors do occur. Verizon's directory listing process now has multiple and redundant verification points at which both Verizon and Cavalier may verify accuracy. Quality assurance teams have also been assigned directly to the task of improving the accuracy of all directory listings. Verizon makes directory listing information available to all contributing CLECs so that the CLECs themselves can provide verification and corrections as necessary. Verizon further provides numerous opportunities for CLECs to become better educated with respect to the directory listing process and at which they may receive ideas with respect to how to improve their overall performance as an integral component of the system. Finally, Verizon frequently participates in industry collaboratives where all carriers can provide feedback and guidance with respect to improving the directory publication process, and it has implemented improvements as a direct result.

3. The FCC and State Commission Have, on Numerous Occasions, Expressly Found That Verizon Provides Nondiscriminatory Access to Directory Listing Services.

As noted above, the FCC has applied a nondiscriminatory access standard in reviewing whether Verizon's access to directory listing service meets the requirements of § 271 of the Act. In applying that standard, the FCC has found that Verizon provides nondiscriminatory access to directory listing service in New York, Massachusetts, Connecticut, Pennsylvania, Rhode Island, Vermont, Maine and New Jersey. The procedures Verizon uses to process directory listing information and publish directories in each of these states are either identical or substantially similar to the systems and procedures Verizon uses in Virginia. Thus, Verizon also provides nondiscriminatory access to directory listing service in Virginia and there is simply no basis for this Commission to find otherwise.

Most recently, at the conclusion of the § 271 proceeding in Virginia, the Virginia State Corporation Commission hearing examiner determined that Verizon also provides directory listing service in accordance with nondiscriminatory access requirements in Virginia.²¹ He reached that conclusion after reviewing an exhaustive record in which many CLECs participated and after specifically considering all of the issues Cavalier now attempts to resurrect here.²²

D. Cavalier's Proposals Are Without Merit And Are Contrary To The Public Interest.

Verizon responds in brief below to each of the sub-issues Cavalier identifies. The Commission should reject all of Cavalier's claims with respect to these issues in their entirety:

a) Issue 3(a): Verification of Cavalier Directory Listings

In Issue 3(a), Cavalier apparently wants to be paid for participating in the process of verifying the accuracy of its own customer's listings. As discussed above, Verizon provides Cavalier with multiple ways to verify that its customers' directory listing information will be reflected in an accurate and timely manner in Verizon's directories. Cavalier's participation in the verification process is crucial because in many instances only Cavalier possesses the information necessary to determine whether its customers' listing is accurate. Verizon is not obligated, nor should it be expected to have pay Cavalier for revealing that information, particularly given that Cavalier is not paying Verizon to publish its customers' primary listings.

Verizon provides Cavalier with order confirmations, an electronic EDI interface, a Web GUI interface and LVRs all of which Cavalier may use to verify its customers' listings. It is in everyone's best interest for Cavalier to take advantage of the resources Verizon provides to

²¹ See *In the matter of Verizon Virginia, Inc., to Verify Compliance with the Conditions Set Forth in 47 U.S.C. § 271(c)*, Report of Alexander F. Skirpan, Jr., Hearing Examiner, Virginia State Corporation Commission Case No. PUC-2002-00046 at 143 (July 12, 2002) ("*Virginia Hearing Examiner Report*").

²² See *Virginia Hearing Examiner Report* at 133-35, 138-40 (considering Cavalier concerns).

verify not only that Verizon has processed Cavalier's customer information correctly but also that Cavalier has provided the correct information in the first place, an ability Cavalier has not always been able to demonstrate.

Cavalier's proposals are more in the spirit of ransom than they are in cooperation. The Commission should reject Cavalier's proposal in its entirety.

b) Issue No. 3(b): Verizon Verification

Cavalier describes Issue 3(b) as "should the party that verifies the accuracy of the listings be duly compensated by the other party for errors that are corrected by the reviewing LEC?" Verizon's response again is that all parties should work together diligently to ensure the accuracy of all listings. Verification of directory listings is not a duty the Act places on a single party, nor should it be. It is in the public's interest and the interest of each company to make directories as accurate as possible. Penalties are not the answer, cooperation is. Moreover, Cavalier's proposal is akin to saying that although Verizon has agreed to clean Cavalier's house for free, Verizon should pay Cavalier if Verizon missed a speck of dust on the mantle, and Cavalier had to remove it.

c) Issue No. 3(c): Cavalier Verification

Cavalier describes Issue 3(c) as "should Cavalier be compensated when it checks for Verizon errors and corrects them only to have Verizon commit further errors?" In support of its position Cavalier reveals its true motivation when it describes its role in verifying its own customers' listings as "Verizon's work." Cavalier apparently would prefer to provide whatever listing information it chooses at some point in the publishing process and then leave it up to Verizon to figure out the remainder and ensure that it is 100% accurate. If during this process Verizon requests Cavalier cooperation, Cavalier is willing to do so only if Verizon compensates

Cavalier. Cavalier's disregard for the accuracy of its customers' listings is nearly shocking and is not in best interest of anyone except Cavalier. When Verizon provides an LVR to Cavalier, it does so to make it easier for Cavalier to verify that its customers' listing information is correct. Requiring Verizon to pay Cavalier to read the LVR to verify its own customers' information would exceed all bounds of reason.

Cavalier's complete aversion to cooperation contrast sharply with the extensive efforts Verizon has taken to improve the quality of Cavalier's directory listing information. Recently, Verizon undertook a special project at no cost to Cavalier to remove nearly 10,000 "dead" listings from one of Verizon's Virginia directories. The dead listings were in the directory because Cavalier had failed to submit the disconnect LSR for each directory listing when the associated loop was disconnected. As a result, thousands of listings remained in the directory when they should have been removed. Verizon developed a software program that generated the necessary service orders to remove these listings, thus eliminating the need for Cavalier to submit thousands of additional LSRs. Verizon's National Marketing Center additionally performed the work necessary to remove over 1300 listings when Cavalier could not provide information needed to create automatically generated service orders. Verizon performed all of this additional work, which was generated solely because of Cavalier's failure to follow applicable procedure, without seeking compensation from Cavalier. There is similarly no reason for Cavalier to seek compensation from Verizon.

d) Issue 3(d): Galley Proofs

Cavalier describes sub-issue 3(d) as "should Cavalier be allowed to check the accuracy of galley proofs prior to publication of the phone books?" Cavalier now admits for the first time that publishing a directory is a "big" project and that "it is important to have many levels of

checking.”²³ On these points Verizon could not agree more. Interestingly, however, and contrary to its earlier positions, Cavalier is now willing to participate in this “big” project without actually charging Verizon for its participation. Nevertheless, Cavalier apparently wants to limit its cooperation to only reviewing “Galley Proofs”. Verizon’s publishing company does not use any mechanism known as a “galley proof.” Verizon does, however, offer a captioned view of listings which can be translated into a final page view as part of the Web GUI.

Cavalier’s proposed amendment language describes Galley Proof as something to be provided no fewer than five business days in advance of publication. Verizon’s directories, however, are closed well in advance of five business days before publication. It would be impossible for Verizon to publish directories if every CLEC in Virginia were able to submit changes right up until five days before publishing. That is precisely one of the reasons why Verizon provides LVRs thirty days in advance of the service order close date for a particular directory. Cavalier receives Verizon’s LVRs and should be checking them. It should also be checking its customers’ directory listing data via the service order confirmations Verizon provides, the EDI interface, and the Web GUI. It should not be requesting yet another confirmation mechanism when apparently it does not even check the ones already provided to it for free.

e) Issue No. 3(e): Post Production Metrics/Remedies/Liquidated Damages

Cavalier describes sub-issue 3(e) as “should Verizon compensate Cavalier at a set amount in liquidated damages for errors in the directory caused by Verizon?” Sub-issue 3(e) reveals Cavalier’s true motivation — money. Cavalier seeks to obtain a new revenue stream from

²³ Cavalier Petition at 12.

Verizon. Cavalier's proposed amendment language states that Verizon would have to pay Cavalier up to \$5000.00 for each mistake Cavalier identifies in Verizon's directories. Cavalier's proposal not only flies in the face of applicable law but if adopted would create perverse incentives that would benefit no one but Cavalier.

As discussed above, Verizon is required to provide nondiscriminatory access, it is not required to act as guarantor to any carrier, much less carriers who voluntarily choose to use Verizon directory listing services for free. The nondiscriminatory access standard is not a strict liability standard whereby a carrier that receives no compensation for the service it provides must suddenly pay thousands of dollars in penalties for every mistake, no matter how minor, in providing that service. Verizon notes that Verizon's Virginia Local General Tariff limits Verizon's liability for free listings in the White and Yellow Pages to the amount Verizon of actual impairment to the customer's service, not to exceed one-half the amount of the fixed monthly charges applicable to Local Exchange Services affected during the period covered by the directory in which the error or omission occurs.²⁴ Verizon and Cavaliers' current interconnection agreement contains a general limitation of liability provision that excludes recovery of lost revenue where the tariff of either party would exclude the same for a similar service. Verizon proposes that the Parties include additional language in their new agreement that would appear as follows:

1.1 Liability: Verizon's liability to Cavalier in the event of a Verizon error in or omission of a Cavalier Customer listing shall not exceed the amount to which Verizon would be liable to its own Customer for such error or omission. Cavalier agrees to take all reasonable steps, including, but not limited to, entering into appropriate contractual provisions with its Customers, to ensure that its and Verizon's liability to Cavalier's Customers in the event of a Verizon error in or omission of a listing shall be subject to the same limitations of liability applicable

²⁴ See Verizon Virginia's General Regulations Tariff, No. 201 § 1(E)3.

between Verizon and its own Customers as set forth in Verizon's applicable Tariffs.

This language ensures that Cavalier and Cavalier's customers will receive the same treatment as Verizon's customers with respect to directory listing and any errors that may occur.

Cavalier's proposal to impose penalties on Verizon payable to Cavalier when Verizon publishes information provided by Cavalier would lead to perverse economic incentives and results that benefit no one but Cavalier. The emphasis in publishing directories should be on efficiently producing accurate, timely and complete directories. Cavalier's proposal would reward Cavalier for any mistakes Verizon makes. Although Cavalier's position on this issues is consistent with its general proposition that it is unwilling to cooperate with Verizon without receiving payment, it is irreconcilable with the goal of publishing accurate directories. Rather than encouraging Cavalier to cooperate with Verizon, Cavalier's proposal would provide Cavalier with strong economic incentives to provide incomplete or misleading directory listing information. It would also financially motivate Cavalier to re-allocate resources to the task of identifying mistakes after publication rather than to identifying and correcting mistakes before publication. Implementing a system whereby either party financially benefits from directories mistakes is not only contrary to law but is also just plain bad policy.

Furthermore, Cavalier's tariffs limit Cavalier's liability to its own customers for directory listing mistakes. For example, Cavalier's Virginia S.C.C. Tariff No. 1 states that "the entire liability for any claim, loss, damage or expense from any cause whatsoever shall in no event exceed sums actually paid the Company by the customer for the specific services giving rise to the claim."²⁵ Cavalier's tariff further limits its liability for any special, incidental, or

²⁵ Cavalier Virginia S.C.C. Tariff No. 1, § 2.1.4 (G).

consequential damages including, but not limited to, harm to business, lost revenues, lost profits, lost savings, or other commercial or economic loss.”²⁶ Cavalier also is not liable for inadvertent disclosure of non-published telephone service.²⁷ Thus, Cavalier proposes to assess substantial monetary penalties on Verizon for any mistakes Verizon makes in publishing Cavaliers’ customers’ directory listings while at the same time its own liability to its customers is severely limited. The Commission should see Cavalier’s proposal as the revenue generating scheme that it is and reject the proposal in its entirety.

f) Issue No. 3(f): Database Access

Cavalier describes sub-issue 3(f) as “should Cavalier be allowed to directly input directory listings orders into Verizon’s database?” However, neither Cavalier’s Petition nor its proposed amendment explains what it means by “directly input”. Verizon assumes that Cavalier is proposing a different system than the LSR process described above currently applicable to all CLECs.²⁸ Again Cavalier misses the applicable legal standard. Verizon is not required to build additional systems and access methods simply because Cavalier requests them. Verizon is required to provide nondiscriminatory appearance and integration of CLEC listings with the same accuracy and reliability as that it provides to its own customers. Verizon satisfies that standard today. Verizon is not required to construct a different mode of access for every CLEC upon request nor should it be. Providing multiple modes and levels of access to numerous carriers would likely reduce overall levels of accuracy as CLECs would have the opportunity to make errors in each others’ listings. Migration of customers from one CLEC to another would add additional layers of confusion and opportunities for mistakes. Although Verizon is unsure as

²⁶ *Id.* at § 2.1.4 (F).

²⁷ *Id.* at § 3.4.8 (B).

to what Cavalier mean by "direct access," such access applied on a broad scale would likely have significant and adverse consequences.

²⁸ Cavalier's proposed amendment states that "The parties may, at Verizon's option, negotiate in good faith an arrangement under which Cavalier will have direct, unmediated access to and ability to input, delete, amend and update its listings within Verizon's directory databases" Cavalier, like any other CLEC, may already accomplish these functions through the LSR process.